

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
31 HOPKINS PLAZA
BALTIMORE, MD 21201

DEPARTMENT OF THE TREASURY

PERSON TO CONTACT:

CONTACT TELEPHONE NUMBER:

REPLY TO:

CERTIFIED MAIL:

DATE: AUG 28 1996

Dear Applicant:

We have completed our review of the application for recognition of exemption from federal income tax under section 501(c)(3) of the Internal Revenue Code and have determined that you do not qualify for exemption under this section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates that you were incorporated [REDACTED], under the laws of [REDACTED] to engage "in any lawful business purpose to be conducted on a not-for-profit basis." These Articles of Incorporation further provide that this corporation is also organized and operated exclusively for charitable, religious, educational and scientific purposes within the meaning of section 501(c)(3) of the Internal Revenue Code. Adequate provision has been made in your Articles of Incorporation to provide for the distribution of your organization's assets in the event your organization dissolves. In reviewing the copy of the Articles of Incorporation which was submitted with your application, we have not been able to determine whether the amendments have been properly filed with [REDACTED] since the amendments appear to have been pasted into the document.

The primary activities of your organization are described as follows:

1. Publication of a newsletter, [REDACTED]. This document is a newsletter published by [REDACTED] which presents strategies for removing bank trustees or gaining concessions, tips on hiring representation, news on legislative reform and practical hints on selecting a corporate fiduciary.

2. Publication of [REDACTED], a guide books and articles of special interest to beneficiaries trustors.
3. Maintenance of a Reference Service. This service provides free copies of articles from the trade literature on trusts and estates.
4. [REDACTED]. Specialized in-depth reports such as how to select a corporate trustee, create a trust instrument that favors the interests of the beneficiary rather than those of the fiduciary. These reports also discuss the complaints raised by beneficiaries with bank managed trusts.
5. Media Package. Free copies of current and past media articles (dating to [REDACTED]) about the problems faced by beneficiaries and trust creators.
6. Individual Counseling. Individual counseling provided on a one-to-one basis.

Other activities of [REDACTED] include promoting legislative reform in [REDACTED] designed to make it easier for a beneficiary to remove an unsatisfactory corporate trustee. On the federal level, [REDACTED] seeks the intervention of the [REDACTED] in reforming the administration of personal trusts by national banks.

You estimate that you have provided assistance to approximately [REDACTED] individuals. Income to your organization comes from sales of subscriptions and publications and membership fees. The fee for an individual membership or trust creator is \$[REDACTED] for [REDACTED] months. Membership fees for individuals providing professional services (legal, brokerage and estate planning are \$[REDACTED] each). Additional funding for these activities has also been donated by your founder, [REDACTED].

Expenses have been shown for typing, copying, postage, telephone, travel, supplies, reference materials and legal services.

Section 501(c)(3) of the Internal Revenue Code provides for the exemption from federal income tax for organizations organized and operated exclusively for charitable, religious, educational and other stated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3) an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under this section.

Section 501(c)(3)-1(b)(1) of the Income Tax Regulations specifies that an organization is organized for one or more exempt purposes, if its Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 1.501(c)(3)-1(b)(iv) of the Income Tax Regulations specifies that an organization is not organized exclusively for one or more exempt purposes, if by the terms of its articles, its purposes are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(4) of the Regulations provides that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will not be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes or to the Federal government, or to a state or local government for a public purpose.

Section 1.501(c)(1) of the Regulations provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if Articles of Incorporation limit the purposes of such organization to exempt purposes.

Section 501(c)(3)-1(d)(1) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3) unless it serves a public rather than a private interest. Thus, to meet the requirements of this subparagraph, an organization must establish that it is not organized and operated exclusively for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled directly or indirectly by such private interests.

1.501(c)(3)-1(d)(3)(i) of the Income Tax Regulations defines education as:

- (a) the instruction or training of an individual for the purpose of improving or developing his capabilities; or
- (b) the instruction of the public on subjects useful to the individual and beneficial to the community.

These regulations define an educational organization as:

1. A primary or secondary school, college or trade school which has a regular faculty, a regularly scheduled curriculum and a regularly enrolled body of students in attendance at a place where the educational activities are carried on;
2. An organization whose activities consist of presenting public discussion groups, forums, panels, lectures or other similar programs.
3. An organization which presents a course of instruction by means of correspondence or through the utilization of radio or television.
4. Museums, zoos, planetariums symphony orchestras and other similar organizations.

In Better Business Bureau v. United States, 326, U.S. 279-283, the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3) regardless of the number or importance of truly exempt purposes. To qualify for exemption under section 501(c)(3), the applicant organization must show that (1) it is organized and operated exclusively for religious, charitable or other stated purposes, (2) that no part of the net earnings inures to the benefit of a private individual or shareholder, and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318 F. 2nd, 632 (7th Cir. 1963).

Organizations that are organized and operated on a nonprofit basis do not always qualify for exemption under section 501(c)(3). The fact that an organization does not make a profit is not the controlling factor. See Baltimore Health and Welfare Fund v. Commissioner, 82 T.C. 854 (1978); and B.S.W. Group v. Commissioner, 70 T.C. 352, (1978)

In Retired Teachers Legal Defense Fund, Inc. Petitioners v. Commissioner of Internal Revenue, Respondent (RTLDF) 78 USTC, 280-291, the court reviews the tax exempt status of an organization whose primary activity included initiating a lawsuit aimed at protecting the financial stability of a teacher's retirement system and the contributions and pensions of retiree members of this system.

In addition to initiating litigation, the organization distributes a newsletter through which retirees are informed of the stability of the pension fund assets. Contributions have been solicited from the 105,000 membership to finance the litigation initiated by RTLDF's president.

In denying exemption to this organization, the court stated that "RTLDF's primary activity involved litigation against the trustees of the pension fund in order to protect the members interests. The main foci of the benefits of this organization and operation are the retirees of this system." The court further stated that "while nearly one-third of the recipients of these benefits are poor and disabled, over two-thirds of the members do not fall within this category." The court also stated "the provision of free legal services to persons who are not poor is not an exempt purpose."

One of the major requirements that an organization seeking exemption under section 501(c)(3) must meet is that it serves public rather than private interests. Although RTLDF had 105,000 members participating in the system, the court held that the public benefit received was too remote. Similarly, in Ginsberg v. Commissioner, 46 T.C. 47 (1966), the court held that an association whose principal purpose was to dredge certain waterways served to benefit adjacent property owners or dwellers and that "Any objective to benefit the general public by providing a storm haven for small craft...was a secondary one." 46 T.C. at 55.

In Christian Stewardship Assistance versus Commissioner, 70 USTC, 1037, an organization providing financial planning advice to wealthy individuals applied for exemption under section 501(c)(3). The court stated that these activities served the private interests of the individuals receiving financial planning and investment advice rather than exclusively public interests as required by section 501(c)(3). The court also held that providing financial and tax planning advice were normally activities conducted by commercial entities and were not exclusively educational within the meaning of section 501(c)(3). Under these circumstances, the court held that this organization was not entitled to exemption under section 501(c)(3).

Our review of the Articles of Incorporation filed with the State of [REDACTED] for [REDACTED] indicates that while the necessary language is included in this document, the paragraphs appear to have been "pasted" into the original document and we have been unable to determine whether this document has been properly filed and approved by the State authorities.

Therefore, we have determined that you have not demonstrated that you meet the organizational test required to be exempt under section 501(c)(3).

You state in your application that [REDACTED] is a non-profit educational organization that seeks to address the grievances of trust creators and beneficiaries regarding the methods used by commercial banks in handling trusts and estates. You also indicates that "[REDACTED]'s goal is to initiate reform of trust/estate administration by providing educational materials to any individual that has a personal trust that is managed by a commercial bank."

These activities are similar to those conducted by the organization in Retired Teachers Legal Defense Fund, Inc., where the court determined that the educational activities only served a segment of the public and therefore did not come within the meaning of the term "educational" as defined in section 1.501(c)(3)(d)(3) of the regulations. The distribution of your newsletter only reaches a segment of the general public interested in estate and trust matters rather than the public at large.

Also, like the organization described in RTLDF, your president has drafted legislation which is pending in a [REDACTED] legislative body which is aimed at changing the way banks administer estates and trusts. Your legislative activities only provide assistance to that segment of the community that is involved with estates and trusts. Like the organizations discussed in the cited precedents, the public benefit provided by [REDACTED]'s activities is too remote to meet the "operated exclusively for a public purpose" requirement of section 501(c)(3).

In addition, like the organization described in Christian Stewardship Assistance, Inc., distribution of estate reform information serves the private interests of the recipients rather than exclusively public purposes. This activity is also one that is normally conducted by commercial financial planning and similar companies. By providing this information to these individuals, [REDACTED] is operating for a substantial nonexempt purpose which also defeats exemption under section 501(c)(3).

Thus, based on the information submitted, we have determined that you are not organized or operated exclusively for one or more purposes described in section 501(c)(3). Therefore, we have concluded that you are not entitled to exemption under this section.

In accordance with this determination, you are required to file federal income tax returns on Form 1120.

Contributions to your organization are not deductible by donors under section 170(c)(2) of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate state officials.

If you do not agree with our determination, you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal, as explained in the enclosed Publication 892. Your appeal should give the facts, law, and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office, or, if you request, at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a power of attorney or tax information authorization with us.

If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination in this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue service as a failure to exhaust administrative remedies.

Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determines that the organization involved has exhausted all administrative remedies available to it within the Internal Revenue Service.

Appeals which do not contain all the documentation required by Publication 892 will be returned for completion.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

[REDACTED]

District Director

Enclosure: Publication 892

cc: [REDACTED]

cc: [REDACTED]